

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 110 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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AKBARALI KASAMALI SAIYED

Versus

STATE OF GUJARAT

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Appearance:

MR JB DASTOOR for Petitioner

Mr.MR ANAND, P.P. with Mr.N.D.Gohil, A.P.P. for the Respondents

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 29/01/97

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.M.R.Anand, learned P.P. with Mr.N.D.Gohil, learned A.P.P. for the Respondents.

2. Heard. In Special Criminal application No. 819/96, a Division Bench consisting of G.D.Kamat, C.J., as His Lordship then was, and Mr.C.K.Thakkar, J. by a decision dated 26.8.1996 in Akbarali Kasamali Saiyed V/s. State of Gujarat, while expressing that it was not necessary for the Division Bench to go into the constitutional validity of Section 4(10) of the Prisons (Bombay Parole and furlough) Rules, 1959, indicating that a prisoner, who has at any time escaped or attempted to escape from lawful custody or has defaulted in any way in surrendering himself at the appropriate time after

release on parole or furlough shall not be considered for release on furlough, has observed that in the facts of the present petitioner's case the Jail Authority should consider the petitioner's application without being influenced by what is mentioned in Rule : 4(10) of the aforesaid Rules. The facts noticed by the Division Bench would show that the petitioner surrendered after having escaped from the lawful custody of the police and after having surrendered he had undergone nearly 8 years of sentence. Besides, his Jail conduct was unblemish, that is to say, there was nothing against the petitioner so far as his conduct was concerned.

3. Now the petitioner has already preferred an application for furlough on or around 18.12.1996 and the grievance is that the said application has yet not been decided. Hence, following direction is required to be issued :

The petitioner's application for furlough shall be decided within a period of two weeks from the date of receipt of writ of this direction and while taking the decision the direction contained in the aforesaid decision of the Division Bench shall also be considered.

Rule made absolute only in the aforesaid terms.

Direct service permitted.

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